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for an opinion on an issue for the jury, and the allowance of an answer that the statement was not true was reversible error.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1036; Dec. Dig. § 450.* 5 Va.-W. Va. Enc. Dig. 778.]

Error to Circuit Court, Charlotte County.

F. C. Thornton was convicted of crime, and he brings error.
Reversed.

H. D. Flood and W. C. Carrington, for plaintiff in error.
The Attorney General, for the Commonwealth.

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LANFORD v. VIRGINIA AIRLINE RY. CO.

Jan. 25, 1912.

[73 S. E. 566.]

1. Appeal and Error (§ 548*)—Bill of Exceptions—Ruling on Admission of Evidence—Waiver.—Where no bill of exceptions is taken to the admission of evidence over objection, the objection is considered as having been waived.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2433-2440; Dec. Dig. § 548.* 5 Va.-W. Va. Enc. Dig. 361.]

2. Railroads (§ 102*)—Action to Require Construction of Crossing—Evidence—Testimony of Commissioners.—In an action under Code 1904, § 1294b, cl. 2, by an owner across whose land a railroad ran, to require the construction of an underway crossing from one part of the land to another, evidence by the commissioners, appointed to assess the owner's damages at the time the road was constructed, as to whether they had considered the fact that the owner would be deprived of a surface crossing by reason of a fill, was admissible to explain the report.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 306-314; Dec. Dig. § 102.* 14 Va.-W. Va. Enc. Dig. 291.]

3. Railroads (§ 102*)—Action to Require Construction of Crossing—Construction of Statutory Provision.—Code 1904, § 1294b, cl. 2, which requires every railroad passing through the lands of any person to provide a suitable “wagonway across” its road, to be constructed on the written request of the owner to an officer or agent of the company, at a point designated by the owner, and that, if the company refuse to construct such way, the owner may appeal to the circuit court for the appointment of commissioners to determine whether the wagonway should be constructed, their report to be confirmed, “unless good cause is shown against it by the company,” considered with section 1294b, cl. 3, which in dealing with the crossing of one railroad by another uses only the word “crossing,” and sec-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tion 1294d, cl. 38, which, as to crossings of other railroads and of county roads, declares it the policy of the state to abolish grade crossings, does not give the owner the arbitrary right to an underway wagon road, but must be given a reasonable construction with reference to the convenience of both parties, and the cost to be incurred by the railroad in constructing the crossing.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 306-314; Dec. Dig. § 102.* 14 Va.-W. Va. Enc. Dig. 291; Id. 860.]

4. Railroads (§ 102*)—Construction of Private Crossings—Appointment of Commissioners—Effect of Report—Burden of Proof.—Under Code 1904, § 1294b, cl. 2, making it the duty of every railroad passing through land of any person to provide a suitable wagonway across its road from one part of the land to another, and providing for the appointment of commissioners on the owner's application to determine whether the wagonway asked for should be constructed, the report of such commissioners locating a crossing and prescribing its character makes a *prima facie* case against the railroad, and imposes upon it the burden of showing good cause against the construction of such crossing, but the report is in no manner conclusive; the whole question being up for decision by the court.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 306-314; Dec. Dig. § 102.* 14 Va.-W. Va. Enc. Dig. 291; 5 Va.-W. Va. Enc. Dig. 106.]

5. Appeal and Error (§ 1032*)—Presumptions—Burden of Showing Error.—A landowner who makes application under Code 1904, § 1294b, cl. 2, to have a railroad running through his farm construct an underway wagon crossing, as to which the lower court has held that good cause was not shown by the report of the commissioners determining that a way was necessary and dismissed the application, the burden is upon him on appeal to satisfy the Supreme Court of Appeals that there was prejudicial error in the decree dismissing the application.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4047-4051; Dec. Dig. § 1032.* 1 Va.-W. Va. Enc. Dig. 582.]

Error to Circuit Court, Fluvanna County.

Application by J. W. Lanford against the Virginia Airline Railway Company to compel the defendant to construct a crossing under its road. Application dismissed, and plaintiff brings error. Affirmed.

Pembroke Pettit and J. O. Shepherd, for plaintiff in error.

C. W. Allen, L. O. Haden, and Harmon & Walsh, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.